



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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May 14, 2002

CERTIFIED RETURN RECEIPT
7099 3400 0016 8896 3847

Dan Powell
Emery Industrial Resources
P.O. Box 489
Price, Utah 84501

Re: Notice of Non-Compliance and Division Directive to Suspend Mining Activities,
Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

This letter is sent to formally notify you that your Cherry Hill Park Mine (M/049/021), is not in compliance with sections of the Utah Mined Land Reclamation Act 40-8-1 et seq (Act) and the Minerals Reclamation Program Rules, sections R647-1 through R647-5.

On July 20, 1992, the Division accepted a Notice of Intention to Commence Small Mining Operations for the Cherry Hill mine site. The Division's acceptance letter stated that you would need to file a Notice of Intention to Commence Large Mining Operations and receive Division Approval prior to expanding beyond five acres of surface disturbance.

On November 14, 1994, the Division received a Notice of Intention to Commence Large Mining Operations from Emery Industrial Resources. Several technical reviews have been performed since the initial filing and you have provided subsequent information to address the regulatory requirements. Unfortunately, the application remains technically deficient. Our September 30, 1999, review document outlined the remaining deficiencies. The large mine permit application cannot be approved until these requirements are adequately addressed.

On March 12, 2002, you met with the Associate Director of Mining and Division staff under a Division Directive to discuss the status of this operation and the remaining technical deficiencies. You agreed to provide the required information no later than March 22, 2002. We have received no information or request for an extension to date.

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2. Emery Industrial Resources is hereby directed to ***immediately suspend all mining operations and removal of material*** from the Cherry Hill Park Mine until the reclamation surety is received and formally accepted in writing by the Division.
3. Within ten (10) days of your receipt of this Notice, Emery Industrial Resources must provide a written response which addresses the remaining technical deficiencies as outlined in the Division's September 22, 1999 review letter.

Consequences of Continued Non-Compliance

1. Emery Industrial Resources' failure to comply with these mitigation requirements within the time frames specified in this Notice will result in the issuance of a formal Notice of Agency Action. The Notice of Agency Action may require the operator to appear at a formal hearing before the Board of Oil, Gas and Mining. Following public notice and Hearing, the Board will issue an abatement or compliance Order which may require: suspension or termination of all mining operations, immediate reclamation of all mining-related disturbances, and/or other lawful requirements as authorized under the Act.

If you wish to appeal this Notice and Directive, you may contact the Division to schedule an informal hearing before the Division Director. Please contact Vickie Southwick, Executive Secretary, at (801) 538-5304, within 10 days of your receipt of this notice, if you choose to arrange an informal hearing. If you have any questions regarding this Notice you may contact me at (801) 538-5306, Wayne Hedberg at (801) 538-5286, or Lynn Kunzler (801) 538-5310.

Sincerely,



Mary Ann Wright,
Associate Director, Mining

jb

Attachments: draft reclamation cost estimate
Permit chronology

cc: Buck Rose, Utah County

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September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation and 0.9 acres that will remain). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and that reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 30, 2001	Meeting held to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting date or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September ?, 2001	Phone call requesting another two week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail. (He lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. No activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went

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April 3, 2002

over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002. Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, need couple more weeks to provide the formal submittal.

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Notice of Non-compliance and Division Directive sent to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies.

RECLAMATION SURETY ESTIMATE Emery Industrial Resources, Inc. Cherry Hill Park Mine M/049/021 Prepared by Utah State Division of Oil, Gas & Mining					last revision 04/23/02 filename M049-021.WB2 Utah County
-Access road, building, loading ramp, facilities not included in this estimate (0.85 acres) -1.5 acres of the site will not receive topsoil -4.2 acres has been regraded (not seeded) -A depth of 6 inches of growth medium to be placed over entire site, because of insufficient amounts of soil, amended reject fines will also be used to complete reclamation.					
Note: actual unit costs may vary according to site conditions					last unit cost update 2-Aug-00
-Amount of disturbed area which will receive reclamation treatments =					19.75 acres
-Estimated total disturbed area for this mine =					20.6 acres
Activity	Quantity	Units	\$/unit	\$	Note
Safety gates, signs, etc. (mtls & installation)	1	sum	200	200	(1)
Regrading disturbed areas (1 ft depth)	15.55	acre	502	7806	(7)
Ripping pit floors, stockpiles & compacted areas	19.75	acre	234	4622	(9)
Highwalls reduction (1800' X 10' @ 3:1))	3000	CY	0.5	1500	
Topsoil replacement - dozer	4900	CY	0.5	2450	(12)
Growth medium replacement - dozer	9800	CY	0.5	4900	(13)
Composted manure (5 ton/acre)	6	acre	150	900	(00)
Composted manure (10 ton/acre)	13.75	acre	300	4125	(00)
Broadcast seeding	19.75	acre	225	4444	(00)
General site cleanup & trash removal	10	acre	50	500	(00)
Equipment mobilization	1	equip	1000	1000	(00)
Reclamation supervision	5	days	386	1930	(15)
		Subtotal		34376	
10% Contingency				3438	
		Subtotal		37814	
Escalate for 5 years at 2.82% per year				5641	
		Total		43455	
Rounded surety amount in year 2007 \$				43500	
Average cost per disturber acre =				2109	
Note					
(1)	DOGM lump sum assumed				
(7)	Means 2000 & Blue Book 3Q/00: Cat D8N, U, mtl 2550 lb/CY, 50 ft push, 1 ft depth				
(9)	Means 2000 & Blue Book 3Q/00: Cat D8N, U, multi shank rippers, speed 1.0 mph				
(12)	Means 2000 & Blue Book 3Q/00: Cat D8N, U, mtl 2550 lb/CY, 100 ft push				
(13)	Means 2000 & Blue Book 3Q/00: Cat 627F P-P, mtl 2550 lb/CY, 2,000 ft haul one-way, grade +/- 4%.				
(00)	DOGM general estimate - manure \$16/ton delivered, \$14 ton/acre spreading				
(00)	DOGM general estimate - broadcast seeding				
(00)	DOGM general estimate - site cleanup & trash removal				
(00)	DOGM general estimate - equipment mobilization				
(15)	Means 2000, 01300-700-0180, project manager, minimum \$1,930/wk				